

HOUSE BILL No. 1115

DIGEST OF INTRODUCED BILL

Citations Affected: IC 20-3-6-6; IC 35-42-4-4; IC 35-49-3-4.

Synopsis: Sending of sexual material by cell phone or other media. Provides that a school corporation may offer classes, instruction, or programs regarding the risks and consequences of creating and sharing sexually suggestive or explicit materials. Provides defenses to the crimes of disseminating matter that is harmful to minors, child exploitation, and possession of child pornography if a cellular telephone was used and the defendant and recipient of the matter are certain ages and meet other requirements.

Effective: July 1, 2010.

Lawson L, Crouch

January 11, 2010, read first time and referred to Committee on Public Policy.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

HOUSE BILL No. 1115

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 20-3-6-6 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2010]: **Sec. 6. A school corporation may offer classes, instruction,
4 or programs regarding the potential risks and consequences of
5 creating and sharing sexually suggestive or sexually explicit
6 materials through cellular telephones, social networking web sites,
7 computer networks, and other digital media.**
8 SECTION 2. IC 35-42-4-4, AS AMENDED BY P.L.216-2007,
9 SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2010]: Sec. 4. (a) As used in this section:
11 "Disseminate" means to transfer possession for free or for a
12 consideration.
13 "Matter" has the same meaning as in IC 35-49-1-3.
14 "Performance" has the same meaning as in IC 35-49-1-7.
15 "Sexual conduct" means sexual intercourse, deviate sexual conduct,
16 exhibition of the uncovered genitals intended to satisfy or arouse the
17 sexual desires of any person, sadomasochistic abuse, sexual intercourse



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or deviate sexual conduct with an animal, or any fondling or touching of a child by another person or of another person by a child intended to arouse or satisfy the sexual desires of either the child or the other person.

(b) A person who knowingly or intentionally:

(1) manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitized image of any performance or incident that includes sexual conduct by a child under eighteen (18) years of age;

(2) disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct by a child under eighteen (18) years of age; or

(3) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age;

commits child exploitation, a Class C felony.

(c) A person who knowingly or intentionally possesses:

(1) a picture;

(2) a drawing;

(3) a photograph;

(4) a negative image;

(5) undeveloped film;

(6) a motion picture;

(7) a videotape;

(8) a digitized image; or

(9) any pictorial representation;

that depicts or describes sexual conduct by a child who the person knows is less than sixteen (16) years of age or who appears to be less than sixteen (16) years of age, and that lacks serious literary, artistic, political, or scientific value commits possession of child pornography, a Class D felony.

(d) Subsections (b) and (c) do not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee's employment when the possession of the listed materials is for legitimate scientific or educational purposes.

(e) It is a defense to a prosecution under subsections (b)(1), (b)(2), and (c) if all of the following apply:

(1) A cellular telephone, another wireless or cellular

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communications device, or a social networking web site was used to possess, produce, or disseminate the image.

(2) The defendant is not more than four (4) years older or younger than the person who is depicted in the image or who received the image.

(3) The relationship between the defendant and the person who received the image or who is depicted in the image was a dating relationship or an ongoing personal relationship. For purposes of this subdivision, the term "ongoing personal relationship" does not include a family relationship.

(4) The crime was committed by a person less than twenty-one (21) years of age.

(5) The person receiving the image or who is depicted in the image acquiesced in the defendant's conduct.

SECTION 3. IC 35-49-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. (a) It is a defense to a prosecution under section 3 of this chapter for the defendant to show:

(1) that the matter was disseminated or that the performance was performed for legitimate scientific or educational purposes;

(2) that the matter was disseminated or displayed to or that the performance was performed before the recipient by a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or by an employee of such a school, museum, or public library acting within the scope of his employment;

(3) that ~~he~~ **the defendant** had reasonable cause to believe that the minor involved was eighteen (18) years old or older and that the minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that the minor was eighteen (18) years old or older; or

(4) that ~~he~~ **the defendant** was a salesclerk, motion picture projectionist, usher, or ticket taker, acting within the scope of ~~his~~ **the defendant's** employment and that ~~he~~ **the defendant** had no financial interest in the place where ~~he~~ **the defendant** was so employed.

(b) It is a defense to a prosecution under section 3 of this chapter if all of the following apply:

(1) A cellular telephone, another wireless or cellular communications device, or a social networking web site was used to disseminate matter to a minor that is harmful to minors.

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- 1 (2) The defendant is not more than four (4) years older or
2 younger than the person who received the matter that is
3 harmful to minors.
4 (3) The relationship between the defendant and the person
5 who received the matter that is harmful to minors was a
6 dating relationship or an ongoing personal relationship. For
7 purposes of this subdivision, the term "ongoing personal
8 relationship" does not include a family relationship.
9 (4) The crime was committed by a person less than twenty-one
10 (21) years of age.
11 (5) The person receiving the matter expressly or implicitly
12 acquiesced in the defendant's conduct.

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